

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

AUER ELECTRIC, INC.

Employer/Respondent

and

Cases¹ 5-RC-16313
5-CA-35007
5-CA-35091

INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS, LOCAL 24,
AFL-CIO

Petitioner/Charging Party

**BRIEF IN OPPOSITION TO EMPLOYER/RESPONDENT'S
EXCEPTIONS TO THE REGIONAL DIRECTOR'S REPORT ON
CHALLENGED BALLOTS**

The Petitioner/Charging Party, International Brotherhood of Electrical Workers, Local 24, AFL-CIO (hereinafter referred to as "the Union"), through its undersigned counsel, files this Brief in Opposition to Employer/Respondent's Exceptions to the Regional Director's Report on Challenged Ballots, and makes the arguments set forth below.

I. Background

Upon a Petition filed by the Union and a stipulation reached by the parties, on June 9, 2009, the Regional Director for Region 5 conducted an election in Case 5-RC-16313 on a unit of employees composed of:

All full-time and regular part-time electrical workers, including foremen, journeymen, mechanics, apprentices, and helpers, employed by the Employer at its Nottingham, Maryland facility, excluding all managers, officer clerical employees, professional employees, guards and supervisors as defined in the Act.

¹ The Employer/Respondent's Exceptions to the Regional Director's Report on Challenged Ballots erroneously identifies the matter as 5-CA-35091. In actuality, the Report, which also contains an Order Consolidating Cases and Notice of Hearing covers cases 5-RC-16313, 5-CA-35007, and 5-CA-35091.

Of the twenty-five votes cast in the election, six were cast for the Union, nine were cast against the Union, and ten votes were challenged. The challenged ballots were sufficient in number to affect the results of the election.

The Union challenged the votes of the following individuals: Bradley Gaugh, Bryan Gaugh, Timothy Jacobs, and Robert Rambo. The Respondent challenged the votes of the following employees: Zach Brown, Nom Jun Copenhagen, Jason Peterson, Ralph Sasser, Paul Skinner, and Robert Ullman.

Contemporaneously with the filing and processing of the Petition, the Union filed the charges in Cases 5-CA-35007 and 5-CA-35091 alleging violations of Section 8(a)(3) of the Act on the layoff or discharge of Zach Brown, Nom Jun Copenhagen, Jason Peterson, Ralph Sasser, Paul Skinner, and Robert Ullman, and violations of Section 8(a)(1) on several threats made to employees. On August 31, 2009, the Regional Director issued a Order Consolidating Cases, Consolidated Complaint and Notice of Hearing on various 8(a)(1) allegations, as well as on the layoffs of Zach Brown, Nom Jun Copenhagen, Jason Peterson, and Ralph Sasser. The Regional Director dismissed the allegation regarding Mr. Ullman and Mr. Skinner.

On September 25, 2009, the Regional Director issued a Report on Challenged Ballots, Revised Tally of Ballots, Order Consolidating Cases, and Notice of Hearing (hereinafter “the Report”) on all three cases. In the Report, the Regional Director resolved and/or decided only ONE (1) of the challenged ballots – that of Robert Ullmann. The Regional Director upheld the Respondent’s challenge to Mr. Ullmann’s ballot, finding that Mr. Ullmann was not eligible to vote and that his ballot should not be counted. Accordingly, the Regional Director issued a Revised Tally of Ballots,

concluding that out of the twenty-four remaining votes cast in the election, six were cast for the Union, nine were cast against the Union, and nine votes remained challenged. The Regional Director also concluded that the remaining challenged ballots were still sufficient in number to affect the results of the election. Pursuant to the authority vested on him by the Board's Rules and Regulations, the Regional Director ordered a hearing to determine the eligibility of the remaining challenged voters, and, also pursuant to the authority vested on him by the Board's Rules and Regulations, consolidated the "R" case with the "C" cases.

On October 9, 2009, the Respondent filed Exceptions to the Regional Director's Report, arguing that a hearing is not needed with regards to the remaining challenged ballots. For the reasons set forth below, the issues raised by the Respondent are procedurally not subject to Exceptions, and the Exceptions should be dismissed.

II. Argument

Section 102.69 (d) of the Board's Rules and Regulations gives the Regional Director the authority to issue a Report on Challenged Ballots on the basis of an administrative investigation or "upon a record of a hearing." With regards to the hearing, the Rules and Regulations unequivocally state that

Such hearing shall be conducted with respect to those objections or challenges which the Regional Director concludes raise substantial and material factual issues.

(Rules and Regulations, Section 102.69(d))(emphasis added). The decision on whether challenges raise "substantial and material factual issues" warranting a hearing is vested exclusively on the Regional Director, and the Rules and Regulations do not provide for a mechanism to except or request review of that decision. In other words, the Regional

Director's decision that a hearing is needed to resolve the challenges is non-reviewable; a hearing "shall" be conducted.

In the present matter, the Regional Director decided/resolved only ONE (1) challenge on the basis of an administrative investigation: the ballot of Robert Ullmann. That decision, and ONLY that decision, is subject to exceptions at this point in the process. Respondent, however, did not except to that decision. Instead, Respondent excepted to the Regional Director's decision to conduct a hearing on the remaining challenged ballots, arguing in fact that the Regional Director should have found on Respondent's favor on the basis of an administrative investigation.

As noted above, the Regional Director's authority to decide whether to resolve the challenges on the basis of an administrative investigation or a hearing is absolute and non-reviewable. The Respondent has pointed to no authority or case law suggesting that the issues raised by the Respondent are ripe for decision by the Board at this time. This is even more so when, in order to address the matters raised by the Respondent, the Board would have to decide in the R case whether the layoffs of several voters were lawful, when the same issue is pending hearing before an ALJ on the C cases.

For the foregoing reason, the Union respectfully requests that the Board finds that the issues raised by Respondent in its Exceptions are not ripe for decision, and that Respondent's Exceptions be dismissed.

Respectfully submitted,

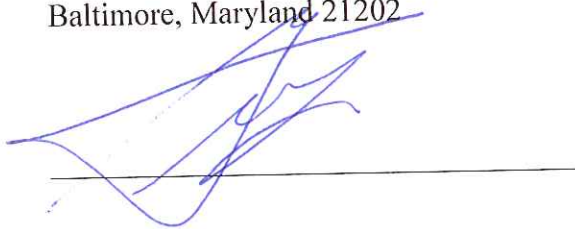
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CERTIFICATE OF SERVICE

I, Gabriel A. Terrasa, hereby certify that on this 15th day of October, 2009, a copy of the foregoing Brief in Opposition to Employer/Respondent's Exceptions to the Regional Director's Report on Challenged Ballots was served via FedEx on the following:

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Offit Kurman, PA
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Maple Lawn, Maryland 20759

Wayne R. Gold, Regional Director
NLRB Region 5
103 South Gay Street, 8th Floor
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A handwritten signature in blue ink is written over a horizontal line. The signature is stylized and appears to be the name of the person who signed the certificate, likely Gabriel A. Terrasa.